STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

[Filed: October 20, 2022]

DINA DIRUZZO and CAROL LACLAIR,	:	
Plaintiffs,	:	
v.	:	**C.A. No. WC-2021-0258**
CHRISTINE SPAGNOLI, *in her capacity as the Finance Director of the Town of Narragansett*;	:	
JESSE PUGH, *in his capacity as the President of the Town Council of the Town of Narragansett*;	:	
SUSAN P. CICILLINE – BUONANNO, *in her capacity as the President Pro Tem of The Town Council of the Town of Narragansett*;	:	
EWA M. DZWIERZYNSKI, *in her capacity as a member of the Town Council of the Town of Narragansett*;	:	
DEBORAH A. KOPECH, *in her capacity as a member of the Town Council of the Town of Narragansett*;	:	
PATRICK W. MURRAY, *in his capacity as a member of the Town Council of the Town of Narragansett*; **and,**	:	
JAMES R. TIERNEY, *in his capacity as the Town Manager of the Town of Narragansett*;	:	
Defendants.	:	

DECISION

TAFT-CARTER, J. Before this Court for decision is Dina DiRuzzo (DiRuzzo) and Carol LaClair's (LaClair) (collectively Plaintiffs) Motion for Injunctive Relief. In response to Plaintiffs' Motion, the Defendants—i.e., the Town of Narragansett; Christine Spagnoli, in her capacity as the Finance Director of the Town of Narragansett; Jesse Pugh, in his capacity as the President of the Town Council of the Town of Narragansett; Susan P. Cicilline-Buonanno, in her capacity as the President *Pro Tem* of the Town Council of the Town of Narragansett; Ewa M. Dzwierzynski, in her capacity as a member of the Town Council of the Town of Narragansett; Deborah A. Kopech, in her capacity as a member of the Town Council of the Town of Narragansett; Patrick W. Murray, in his capacity as a member of the Town Council of the Town of Narragansett; and James R. Tierney, in his capacity as the Town Manager of the Town of Narragansett (collectively the Defendants)—object.

Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13, 8-2-14, and 9-30-1.

I

Facts and Travel

The crux of the instant dispute concerns the constitutionality and validity of the Narragansett Town Council's (the Council) passage of an amendment to the Narragansett Code of Ordinances to permit parking on the south side of Conant Avenue, the north side of Pilgrim Avenue, and the south side of Louise Avenue "from 5:01 AM to 8:59 PM daily." *See generally* Verified Compl. for Declaratory J. (Compl.); *see also* Defs.' Mem. of Law in Opp'n to Pls.' Mot. for Inj. Relief (Defs.' Opp'n Mem.) Ex. 8 (Narragansett Town Council Agenda for May 3, 2021) (providing detailed account of procedural developments and the contents of amendment).

Plaintiffs are both residents of Narragansett with homes located on Louise Avenue. *See* Compl. ¶¶ 1-2; Defs.' Answer to Verified Compl. (Defs.' Answer) ¶¶ 1-2 (admitting allegations as true). More specifically, DiRuzzo's home is located at 18 Louise Avenue and LaClair's home is located at 14 Louise Avenue. *See* Compl. ¶¶ 1-2; Defs.' Answer ¶¶ 1-2 (admitting allegations as true).

The roadways in question—i.e., Conant Avenue, Pilgrim Avenue, and Louise Avenue (the Subject Roadways)—all intersect with Ocean Road and Calef Avenue and are in close proximity to coastal access points. *See* Defs.' Opp'n Mem. Ex. 3 (Tax Assessor's Map). There is no dispute that the Subject Roadways are owned and maintained by the Town. *See generally* Pls.' Mem. of Law in Supp. of Their Mot. for Inj. Relief (Pls.' Mem.); Defs.' Opp'n Mem.; Defs.' Opp'n Mem. Ex. 11 (Baseline Report for Comprehensive Plan) (listing each of the Subject Roadways as an "Accepted Town Road"). There is also no dispute that prior to the amendments at issue, the previous parking restrictions were in place since 1970.

On January 4, 2021, the Council held one of its regular meetings (the January 4 Meeting). (Defs.' Opp'n Mem. Ex. 2 (January 4, 2021 Meeting Minutes).) The agenda for the January 4 Meeting included a motion to direct "the Town Solicitor to prepare an amendment to the Town's parking ordinance to add public parking spaces in the neighborhood around the waterfront public access points at the end of Conant Avenue and Pilgrim Avenue[.]" (Defs.' Opp'n Mem. Ex. 1 (January 4, 2021 Meeting Agenda).) The Council proceeded with the motion at the January 4 Meeting and allowed for public comment. *See* Defs.' Opp'n Mem. Ex. 2 (January 4, 2021 Meeting Minutes). Those offering statements with respect to the proposed resolution included DiRuzzo, Narragansett Chief of Police Sean Corrigan (Chief Corrigan), and the Narragansett Public Works Department Director Michael DiCicco. *See id.*

As a result of the comments, the Council introduced a motion to amend the pending motion. *See id.* The substance of the amended motion was to:

> "[D]irect the Town Solicitor to amend the parking ordinance to allow legal parking on the south side of Conant Avenue from Ocean Road to the end of the public access point, on the south side of Louise Avenue from Ocean Road to Calef Avenue, the north side of Pilgrim Avenue from Ocean Road to the end of the public access point, and to explore adding crushed stone where appropriate." *Id.*

After allowing for additional public comment, the motion to amend the motion to direct was approved by a unanimous vote. *Id.*

Thereafter, the Council scheduled a regular meeting for February 16, 2021 (the February 16 Meeting). *See* Defs.' Opp'n Mem. Ex. 4 (February 16, 2021 Meeting Agenda). There were four motions introduced at the February 16 Meeting that are relevant to the instant dispute. *See* Defs.' Opp'n Mem. Ex. 5 (February 16, 2021 Meeting Minutes).

The first motion was to "introduce, read, pass and accept as a first reading a resolution amending the Official List of Parking Restrictions and Regulations . . . to restrict parking on **Nichols Avenue**." *Id.* The Council heard testimony from Chief Corrigan, who suggested restricting parking on both sides of Nichols Avenue because "it is narrow and wet on the shoulders" and his department received complaints about parking on that road. *Id.* The Council also allowed for public comment—including comment from DiRuzzo—prior to approving the motion regarding Nichols Avenue by a unanimous vote. *Id.*

The second, third, and fourth motions were to "introduce, read, pass and accept as a first reading a resolution amending the official List of Parking Restrictions and Regulations in the Town of Narragansett in accordance with the Narragansett Code of Ordinances[.]" *Id.* These motions pertained to the proposal for additional public parking on the Subject Roadways and were amended to state "parking is permitted from 5:01 AM to 8:59 PM" for the proposed parking areas. *Id.* The

Council heard public comment on these motions as well—including statements from Chief Corrigan, Plaintiffs, and other individuals—before voting unanimously in favor thereof. *Id.*

In addition, the Council's decision to add time restrictions was deemed to be significant enough to warrant another first reading of the amendments proposed with respect to parking regulations on the Subject Roadways. *See id.* (noting that Councilmember Cicilline-Buonanno suggested another first reading); Defs.' Opp'n Mem. Ex. 6 (March 1, 2021 Meeting Agenda) (listing plan to conduct another first reading of proposed amendments); Defs.' Opp'n Mem. Ex. 8 (May 3, 2021 Meeting Agenda) (stating basis for additional first reading).

On March 1, 2021, the Council held another regular meeting where it addressed proposed amendments to parking regulations in the Town (the March 1, 2021 Meeting). *See* Defs.' Opp'n Mem. Ex. 6 (March 1, 2021 Meeting Agenda). As with the February 16 Meeting, there were multiple motions introduced that are relevant to the instant dispute. *See id.*

The first motion was "to read, pass and adopt as a second reading a resolution amending the Official List of Parking Regulations . . . to restrict parking on **Nichols Avenue**." (Defs.' Opp'n Mem. Ex. 7 (March 1, 2021 Meeting Minutes).) Upon motion, the Council voted unanimously in favor of a second reading and the enactment of the parking restrictions for Nichols Avenue. *Id.*

The second motion was "to introduce, read, pass and accept as a first reading a resolution . . . to permit parking on the south side of **Conant Avenue**, the north side of **Pilgrim Avenue**, and the south side of **Louise Avenue** from 5:01 AM to 8:59 PM daily." *Id.* At the March 1 Meeting, proposed changes to parking regulations on the Subject Roadways were presented in the form of a consolidated resolution (the Consolidated Resolution). (Defs.' Opp'n Mem. Ex. 8 (May 3, 2021 Meeting Agenda) (containing attachment explaining consolidation of the amendments). The Council allowed for public comment from various individuals, including LaClair. *Id.* Thereafter,

the Council voted unanimously to approve the motion for a first reading of the Consolidated Resolution. *Id.*

On March 12, 2021, the Narragansett Town Clerk received a petition filed in accordance with Section 2-1-9(a) of the Town's Charter, which contained the verified signatures of twenty-nine electors of the Town (the Hearing Petition). *See* Pls.' Mem. Ex. D (Petition for Public Hearing). The Hearing Petition requested that there be a public hearing on the proposed amendments contained in the Consolidated Resolution before any further action was taken with respect to the same. *See* Defs.' Opp'n Mem. Ex. 8 (May 3, 2021 Meeting Agenda) (containing letter to the Council detailing substance of the Hearing Petition). The Hearing Petition complied with § 2-1-9(a), thus requiring the Council to schedule a public hearing on the Consolidated Resolution. *See* Code of Ordinances of Town of Narragansett, Rhode Island § 2-1-9(a) (Sept. 18, 2019). Accordingly, the Council scheduled the hearing for May 3, 2021 to take place at a regular meeting of the Council (the May 3 Meeting). *See* Defs.' Opp'n Mem. Ex. 8 (May 3, 2021 Meeting Agenda).

At the May 3 Meeting, the Council conducted a public hearing on the Consolidated Resolution, allowing for extensive public comment. *See generally* Defs.' Opp'n Mem. Ex. 9 (May 3, 2021 Meeting Minutes). During the hearing, many members of the community came forward to offer their comments in support and opposition to the Consolidated Resolution. *See generally id.* Those who offered comments included Attorney Mancini, Plaintiffs, and members of the Council. *See generally id.* At the conclusion of the public hearing, the Council conducted a second reading of the Consolidated Resolution and approved the enactment of the same by a unanimous vote (the Amended Parking Ordinance). *Id.*

Subsequently, Plaintiffs filed the instant action on June 3, 2021, seeking entry of declaratory judgment and injunctive relief based on allegations that enactment of the Amended Parking Ordinance is unconstitutional, in violation of the Town's Subdivision Regulations, and illegal for failure to comport with the public health, safety, and welfare. *See generally* Compl. It is based upon these claims that Plaintiffs now seek a preliminary injunction enjoining the Town from enforcing the Amended Parking Ordinance and requiring the Town to certify that the Amended Parking Ordinance is null and void as a matter of law. (Pls.' Mot. for Inj. Relief 2.)

II

Standard of Review

It is well established that the criteria the Court should consider in determining whether to grant a preliminary injunction is as follows:

> "[I]n deciding whether to issue a preliminary injunction, the hearing justice should determine whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo." *Iggy's Doughboys, Inc. v. Giroux*, 729 A.2d 701, 705 (R.I. 1999) (citing *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997)).

Furthermore, "the decision to grant a preliminary injunction rests within the sound discretion of the hearing justice." *Id.*

III

Analysis

A

Likelihood of Success on the Merits

The first factor for the Court to consider is Plaintiffs' likelihood of success on the merits with respect to the various claims alleged in the Complaint. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705. In Rhode Island, there is no requirement that the party seeking injunctive relief establish "a certainty of success"[;] rather, Rhode Island law only requires that the party seeking the injunction make a prima facie case for such relief. *See Fund for Community Progress*, 695 A.2d at 521. "Prima facie evidence is [considered the] amount of evidence that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue." *Paramount Office Supply Co., Inc. v. D.A. MacISAAC, Inc.*, 524 A.2d 1099, 1101 (R.I. 1987).

1

Enactment of Parking Restrictions Are Legislative Acts

There is no dispute by the parties that the Amended Parking Ordinance constitutes a legislative action taken by the Council. *See* Pls.' Mem. 14-17 (formulating argument that the Amended Parking Ordinance constitutes an unconstitutional legislative action taken by the Council); Defs.' Opp'n Mem. 4, 6-7 (stating facts and arguing that the Amended Parking Ordinance constitutes a legislative action). That premise is firmly supported by Rhode Island case law and the powers vested in the Council under these circumstances. *See* G.L. 1956 §§ 31-12-12, 45-6-1; Code of Ordinances of Town of Narragansett, Rhode Island § 74-35(a); *Godena v. Gobeille*, 88 R.I. 121, 126-27, 143 A.2d 290, 293 (1958) (citing *Greenhough v. School Committee of Pawtucket*, 27 R.I. 427, 428, 62 A. 978, 978 (1906)) ("Where a council acts not to determine

presently contested rights *but to direct some action in the future on the basis of policy or expediency* it is acting legislatively and not judicially.") (emphasis added). There is also no dispute that the Subject Roadways are public streets. *See* Compl. ¶ 24; Pls.' Mem. 6; Defs.' Opp'n Mem. 6. Furthermore, the Town is empowered to regulate the Subject Roadways.

It is without dispute that the Council exercised its legislative discretion in deciding to enact the Amended Parking Ordinance. *See Godena*, 88 R.I. at 127, 143 A.2d at 293; §§ 31-12-12, 45-6-1; Code of Ordinances of Town of Narragansett, Rhode Island § 74-35(a). As such, and by virtue of the decision of the Council, the enaction of the Amended Parking Ordinance constitutes a legislative act. *See Godena*, 88 R.I. at 127, 143 A.2d at 293. In Rhode Island, appeals challenging actions that fall within the ambit of legislative discretion generally will not be entertained. *See Godena*, 88 R.I. at 127, 143 A.2d at 293; *see also Gardner v. Cumberland Town Council*, 826 A.2d 972, 976-77 (R.I. 2003) (applying *Godena* and related precedent to establish lack of jurisdiction to review challenge to town council's decision on the merits). Here, the plaintiffs do not challenge the council's exercise of its legislative discretion; rather, it is argued that the Amended Parking Ordinance is unconstitutional, null, void, and unenforceable as a matter of law. *See* Pls.' Mem. 14-21; 23-25. The Defendants maintain that this action is somehow brought in an effort to circumvent the clearly established rule that appeals challenging actions that fall within legislative discretion should not be entertained. *See id.* Notwithstanding the Town's position, this Court is not persuaded that competent counsel would choose to circumvent an established rule without foundation.

2

Rational Basis and Due Diligence

As a general matter, Plaintiffs argue that the Amended Parking Ordinance is unenforceable because "[t]he failure to document and substantiate the need for the Parking Ordinance and to then mandate the same upon Town residents owning property in the locus . . . constitutes an action that is not rationally related to any legitimate governmental interest." (Pls.' Mem. 14.) Plaintiffs also maintain that the Council failed to exercise due diligence prior to the enactment of the Amended Parking Ordinance. *See id.* at 16-17. Based on these contentions, Plaintiffs conclude that the Amended Parking Ordinance is illegal, null, and void without a rational basis to substantiate the same. *See id.* at 14-17.

In response, the Defendants argue that the Council enacted the Amended Parking Ordinance to provide improved coastal access pursuant to the Town's Comprehensive Plan, thus constituting a rational basis to advance a legitimate government interest. (Defs.' Opp'n Mem. 8-10.)

Plaintiffs emphasize that the legal analysis applied in zoning law governs here. *See* Pls.' Mem. 14-15. It is argued that the doctrine that "***[a] zoning ordinance may be unreasonable because it does not advance a reasonable government interest or because it does so unreasonably***." *Id.* (citing *Landon Holdings, Inc. v. Grattan Township*, 667 N.W.2d 93 (Mich. Ct. App. 2003)). However, reliance on *Landon Holdings, Inc.* and other cases for this proposition is unpersuasive because the Amended Parking Ordinance is not a zoning ordinance, rather it is an exercise of the Town's police powers. *See Allen & Reed v. Presbrey*, 50 R.I. 53, 59, 144 A. 888, 890 (1929); *id.* at 56, 144 A. at 889 ("A parking ordinance is nothing more than a police regulation which settles the matter between the owner of the automobile and the city."); §§ 31-12-12, 45-6-1;

Code of Ordinances of Town of Narragansett, Rhode Island § 74-35(a). Accordingly, to the extent the Town's Zoning Laws require the Town take certain actions in connection with the passage or amendment of a zoning ordinance, those requirements are inapplicable here. *See Presbrey,* 50 R.I. at 59,144 A. at 890; §§ 31-12-12, 45-6-1; Code of Ordinances of Town of Narragansett, Rhode Island § 74-35(a).

Furthermore, Plaintiffs cite to several Rhode Island Supreme Court cases in support of their position that the Amended Parking Ordinance is arbitrary and unreasonable. *See* Pls.' Mem. 14-17. However, Plaintiffs' reliance on those cases is unpersuasive as they are readily distinguishable.

Plaintiffs' emphasis on our Supreme Court's decision in *Johnson & Wales College v. DiPrete,* 448 A.2d 1271 (R.I. 1982) (*Johnson & Wales*) is unwarranted. (Pls.' Mem. 15-16.) *Johnson & Wales* involved a challenge to the reasonableness and validity of certain zoning ordinances enacted by the City of Providence regulating the use of private property that Johnson and Wales College sought to use as a dormitory. *See generally Johnson & Wales,* 448 A.2d at 1273-75 (outlining factual and procedural history of the case).

One of the key issues in *Johnson & Wales* was "whether the enactment of ordinance No. 6-80-1 . . . is an arbitrary, capricious, irrational, and unreasonable exercise of the city's authority to enact minimum-housing ordinances." *Id.* at 1280. On that issue, Johnson & Wales College argued that particular subparts of the ordinance at issue were "constitutionally offensive for their failure to serve the public health and welfare rationally[.]" *Id.* The trial court found that the ordinance at issue "contained unreasonable requirements to safeguard the health, welfare and safety of dormitory occupants." *Id.* at 1281. Our Supreme Court stated that "[i]t is clear to us after a thorough review of the entire record *that the city forgot that its prime legislative function is to act so as to preserve and promote the public health, safety, morals, and general welfare*." *Id.*

(emphasis added). Accordingly, the *Johnson & Wales* Court also determined that "[t]he evidence . . . shows that the city's *only objective* was to prevent Johnson & Wales from using the premises as a college facility[]" and stated the City of Providence's action "to deny an otherwise legal and permitted use is intolerable." *Id.* at 1282 (emphasis added).

In addition, Plaintiffs point to *L.A. Ray Realty v. Town Council of Town of Cumberland*, 698 A.2d 202 (R.I. 1997) (*L.A. Ray Realty*) in several instances as support for their argument regarding the lack of any rational basis for the Council's enactment of the Amended Parking Ordinance. *See* Pls.' Mem. 14, 21.

In *L.A. Ray Realty*, our Supreme Court issued a decision on cross-appeals from a superior court judgment awarding damages to the plaintiffs—developers whose subdivision applications had been denied—"on the grounds that the town had engaged in tortious interference with the plaintiffs' prospective economic advantage." *L.A. Ray Realty*, 698 A.2d at 204-05.

On appeal, the *L.A. Ray Realty* Court examined whether the Cumberland Town Council violated the plaintiffs' substantive due process rights through "the use of governmental power for purposes of oppression, or abuse of governmental power that is shocking to the conscience, or legally irrational action that is not keyed to a legitimate state interest." *See id.* at 211-13. On that issue, the *L.A. Ray Realty* Court determined that: "the town through its officials *acted egregiously, as well as with animus*, and without actual or legal basis, to deprive plaintiffs of [their] substantive due process rights." *Id.* at 213 (emphasis added).

In reaching that conclusion, the *L.A. Ray Realty* Court explained that this holding was based upon the totality of circumstances and evidence demonstrating that town officials: (a) purposely altered an already improperly adopted referendum, (b) distributed a falsified ordinance to the Cumberland planning and zoning boards, (c) defied a superior court order to hold detrimental

reliance hearings on the plaintiffs' subdivision applications, and (d) determined that other applicants in the same position as the plaintiffs had detrimentally relied on the prereferendum regulations at issue and were therefore granted final approval of their subdivision. *Id.* at 211-12.

The facts of this case are clearly distinguishable. Here, the Council enacted the Amended Parking Ordinance based on the need to provide improved coastal access in accordance with the Town's Comprehensive Plan. *See* Defs.' Opp'n Mem. Exs. 2, 5, 7, 9 (meeting minutes) (containing statements from several councilmembers and members of the public regarding importance of parking in relation to coastal access).

There is evidence on this record of excerpts from the Town's Action Plan (the Action Plan) and Roadmap (the Roadmap) for its Comprehensive Plan, along with the Town's Baseline Report (the Baseline Report) establishing the need for improved coastal access. *See generally* Defs.' Opp'n Mem. Ex. 10 (Excerpts from Narragansett Comprehensive Plan Action Plan and Roadmap) (listing goals specific to issue of coastal access); Defs.' Opp'n Mem. Ex. 11 (Narragansett Comprehensive Plan Baseline Report), at 138, 141 (discussing importance of coastal access through public rights-of-way in relation to Comprehensive Plan and specifically listing the Subject Roadways in relation thereto).

For instance, the Action Plan enumerates a specific goal to "[e]nsure that the Town's natural resources contribute to the local quality of life" by ensuring "that residents and visitor[s] share access to natural resources, where appropriate." (Defs.' Opp'n Mem. Ex. 10 (Excerpts from Narragansett Comprehensive Plan Action Plan and Roadmap) (listing goals specific to issue of coastal access).) In accordance with that goal, the Town adopted a policy to "[p]romote increased public access to the shore[]" in connection with that specifically enumerated goal identified under the Action Plan. *See id.*

In addition, the Baseline Report specifically recognizes that "[t]he State, in the interest of all Rhode Islanders, has made substantial investments in the acquisition and improvement of beaches and other coastal recreation areas in Narragansett." (Defs.' Opp'n Mem. Ex. 11 (Narragansett Comprehensive Plan Baseline Report), at 138.) The Baseline Report goes on to state that "these beaches *are a major attraction for tourists as well as local and state residents*[]" and therefore constitute "*a major asset to local businesses*." *Id.* (emphasis added). Hence, the Baseline Report provides a table titled "Coastal Public Access Inventory," where the Subject Roadways are individually identified as public roads that provide a means for coastal access. *See id.* at 138, 141.

Moreover, the evidence on this record clearly demonstrates that the Amended Parking Ordinance was enacted to advance the Town's goal of providing improved coastal access. *See generally* Defs.' Opp'n Mem. Exs. 2, 5, 9 (meeting minutes) (containing statements from several councilmembers and members of the public regarding importance of parking in relation to coastal access).

For example, at the January 4 Meeting—where the proposed amendments were first discussed—members of the Council discussed the competing interests of maintaining "the quality and integrity of neighborhoods" located at Conant and Pilgrim Avenue while also maintaining "the public's right to access the water." (Defs.' Opp'n Mem. Ex. 2 (January 4, 2021 Meeting Minutes).) At the February 16 Meeting—where the proposals included potential amendments for parking on each of the Subject Roadways and Nichols Avenue—Councilmember Murray stated that the areas selected for parking on the Subject Roadways "were chosen based upon where people were actually choosing to park." Defs.' Opp'n Mem. Ex. 5 (February 16, 2021 Meeting Minutes).)

Finally, the May 3 Meeting made it abundantly clear that the Council sought to enact the Amended Parking Ordinance to improve coastal access. *See generally* Defs.' Opp'n Mem. Ex. 9

(May 3, 2021 Meeting Minutes).) For instance, Councilmember Cicilline-Buonanno stated that "the Council spent a lot of time on the parking on Conant, Pilgrim, and Louise Avenues *trying to balance the need for public access as well as neighborhood property owner's concerns*." *Id.* (emphasis added). Councilmember Dzwierzynski spoke particularly on the issue of coastal access, attesting to the fact that "[t]he issue of safety has been addressed[]" and expressed her feeling that the Council "needs to look at what can be done now to address access to the shoreline." *Id.* Council President Pugh also offered comment, stating that the proposed changes to parking restrictions on the Subject Roadways were being made to address demand issues, noting that the Amended Parking Ordinance "is not an anti-resident ordinance[]" because "[r]esidents also park in that area." *Id.*

Based on these facts, the Plaintiffs' reliance on *Johnson & Wales* and *L.A. Ray Realty* is unpersuasive. *Compare* Defs.' Opp'n Mem. Exs. 2, 5, 9, (meeting minutes), *with Johnson & Wales*, 448 A.2d at 1273-75, 1280-81 *and L.A. Ray Realty*, 698 A.2d at 204-05, 211-13. The Council had a clear and rational basis for enacting the Amended Parking Ordinance: advancing the legitimate state interest to provide improved coastal access. *See* Defs.' Opp'n Mem. Ex. 10 (Excerpts from Narragansett Comprehensive Plan Action Plan and Roadmap); Defs.' Opp'n Mem. Ex. 11 (Narragansett Comprehensive Plan Baseline Report), at 138, 141. The City of Providence's "intolerable" actions in *Johnson & Wales* and the town officials' egregious and animus-tainted conduct in *L.A. Ray Realty* render those cases factually distinguishable and inapplicable to the facts of this case. *See Johnson & Wales*, 448 A.2d at 1273-75, 1280-81; *L.A. Ray Realty*, 698 A.2d at 204-05, 211-13.

Furthermore, Plaintiffs' assertion that the Town failed to exercise any due diligence in determining the potential effects of the Amended Parking Ordinance lacks merit. *See* Pls.' Mem. 16-17.

For example, Chief Scott Partington of the Narragansett Fire Department has attested to the fact that "[q]uestions as to emergency vehicle access in the areas were addressed by the Narragansett Fire Department as a result of the Town Council inquiries into parking near the coastal access areas." (Partington Aff. ¶ 4.) Thus, the Narragansett Fire Department conducted an investigation and "determined that parking *on both sides of any of the subject streets* would pose a problem for emergency vehicle access[.]" *Id.* ¶ 5 (emphasis added). However, the investigation also revealed "that parking *on one side of Conant Avenue, Pilgrim Avenue, and Louise Avenue* would not pose an issue for access for emergency vehicles." *Id.* ¶ 6 (emphasis added). Additionally, the Fire Department "recommended that parking be prohibited on both sides of [Nichols Avenue] to allow for access to Plat M – which includes Louise Avenue, Conant Avenue, and Pilgrim Avenue." *Id.* ¶ 7. These findings are reflected in the Council's ultimate decision to restrict any parking on Nichols Avenue and the enactment of the Amended Parking Ordinance, which only permits parking on one side of each of the Subject Roadways. *See* (Defs.' Opp'n Mem. Ex. 7 (March 1, 2021 Meeting Minutes) (detailing approval of parking restrictions on Nichols Avenue; Pls.' Mem. Ex. B (text of Amended Parking Ordinance).

Finally, the meeting agenda and minutes submitted in connection with Defendants' Objection clearly demonstrate the Council carefully considered the issues at stake before enacting the Amended Parking Ordinance. *See generally* Defs.' Opp'n Mem. Exs. 1, 2, 4-9 (meeting agendas and minutes).

Therefore, Plaintiffs have failed to establish a reasonable likelihood of success on the merits with respect to their claims that the Council lacked any rational basis for enacting the Amended Parking Ordinance and failed to exercise any due diligence prior to the enactment of the same. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705; *Fund for Community Progress*, 695 A.2d at 521.

3

Due Process

Plaintiffs allege that the Council's enactment of the Amended Parking Ordinance amounts to a violation of the Procedural and Substantive Due Process Clauses of the Rhode Island Constitution. (Compl ¶¶ 45-49 (asserting violation of R.I. Const. art. I, §§ 2, 16).)

Article I, § 2 of the Rhode Island Constitution provides in pertinent part that "[n]o person shall be deprived of life, liberty or property without due process of law[.]" R.I. Const. art. I, § 2.

Our Supreme Court has quoted the United States Supreme Court in its explanation that "'[t]he Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct.'" *State v. Germane*, 971 A.2d 555, 574 (R.I. 2009) (quoting *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985)). "The guarantee of procedural due process assures that there will be fair and adequate legal proceedings, while substantive due process acts as a bar against 'certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.'" *Id.* (quoting *L.A. Realty*, 698 A.2d at 210).

i

Procedural Due Process

Plaintiffs argue that the procedures associated with the enactment of the Amended Parking Ordinance suffer from several defects which render it unconstitutional. *See* Pls.' Mem. 17-21. In support of this contention, Plaintiffs reiterate the same argument regarding the lack of a rational basis for the Amended Parking Ordinance. *See id.* at 20-21. Plaintiffs also aver that the Council failed to act impartially and that the May 3 Meeting was a sham hearing such that their procedural due process rights have been violated. *See id.* at 18-21.

It is well settled that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *see also Riley v. Narragansett Pension Board*, 275 A.3d 545, 550 (R.I. 2022) (citing *Eldridge*, 424 U.S. at 333 for the same proposition).

However, "[i]n the case of legislative action, it is impractical to give every individual who may be affected a direct voice in the decision-making process." *Smithfield Concerned Citizens for Fair Zoning v. Town of Smithfield By and Through Rainville*, 719 F. Supp. 75, 83 (D.R.I. 1989) (*Town of Smithfield*) (citing *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441, 445 (1915)). Accordingly, it is well settled that legislative bodies taking legislative action need not provide notice and an opportunity to be heard because the rights of individuals "are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule." *Bi-Metallic Investment Co.*, 239 U.S. at 445; *Cournoyer v. City of Woonsocket Budget Commission*, No. PC 2013-4082, 2015 WL 1735536, at *14 (R.I. Super. Apr. 10, 2015) (citing *75 Acres, LLC v. Miami-Dade County, Florida*, 338 F.3d 1288, 1298

(11th Cir. 2003)) ("It is well settled that a Legislature performing its legislative function is not required to provide notice and an opportunity to be heard to every individual affected by a law aimed at the general public."); *National Amusements, Inc., v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *see also Narragansett 2100, Inc. v. Town of Narragansett*, No. WC-2020-0353, 2021 WL 2327266, at *5 (R.I. Super. June 1, 2021) (holding procedural due process rights did not apply in the context of legislative action); Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law* § 17.8(c) (May 2022 Update) ("When the legislature passes a law which affects a general class of persons, those persons have all received procedural due process—the legislative process.").

Moreover, the non-applicability of such protections is also supported by case law from neighboring jurisdictions. *See, e.g.*, *Town of Smithfield*, 719 F. Supp. at 83; *Town of Dedham*, 43 F.3d at 746 (quoting *Bi-Metallic Investment Co.*, 239 U.S. at 445).

Here, the Council was acting in its legislative capacity by enacting the Amended Parking Ordinance. *See* §§ 31-12-12, 45-6-1; Code of Ordinances of Town of Narragansett, Rhode Island § 74-35(a); *Godena*, 88 R.I. at 126-27, 143 A.2d at 293 (citing *Greenhough*, 27 R.I. at 428, 62 A. at 978). Thus, the fact that procedural due process requirements do not apply with equal force to legislative actions undermines Plaintiffs' request for injunctive relief on that basis. *See Bi-Metallic Investment Co.*, 239 U.S. at 445; *Narragansett 2100, Inc.*, 2021 WL 2327266, at *5; *Cournoyer*, 2015 WL17535536, at *14; *Town of Smithfield*, 719 F. Supp. at 83; *Town of Dedham*, 43 F.3d at 746; Rotunda & Nowak, cited *supra*.

The actions of the Council clearly afforded Plaintiffs and other interested parties adequate procedural due process because members of the public were given notice and an opportunity to be heard with respect to the Amended Parking Ordinance during each stage leading to its final

enactment. *See* Defs.' Opp'n Mem. Exs. 2, 5, 7, 9 (meeting minutes of the regular meetings where the contents of the Amended Parking Ordinance were introduced and discussed); Defs.' Opp'n Mem. Exs. 1, 4, 6, 8 (meeting agendas posted to provide notice of procedures associated with presentation and enactment of Amended Parking Ordinance). The Council enhanced the protections when it conducted another first reading of the proposed amendments after time restrictions were added by motion at the March 1 Meeting. *See* Defs.' Opp'n Mem. Ex. 8 (May 3, 2021 Meeting Agenda) (stating basis for additional first reading).

The Council also complied with the procedures required by the Town Charter and those triggered by the filing of the Hearing Petition. *See* Code of Ordinances of Town of Narragansett, Rhode Island §§ 2-1-9(a), 74-35(a) (Sept. 18, 2019). Additionally, the Council provided notice of the public hearing held at the May 3 Meeting. *See* Defs.' Opp'n Mem. Ex. 8 (May 3, 2021 Meeting Agenda).

Furthermore, the meeting minutes of the May 3 Meeting severely undermine Plaintiffs' position that the public hearing was a sham and that the Council was incapable of acting impartially. *See generally* Defs.' Opp'n Mem. Ex. 9 (May 3, 2021 Meeting Minutes). Of note, the May 3 Meeting Minutes reflect that many members of the public were given the opportunity to offer public comment on the proposed amendments. *See id.* Members of the Council spoke as well, and their statements were responsive to the issues raised at the May 3 Meeting and previous meetings. *See id.* Accordingly, the evidence before this Court does not support a finding that that Plaintiffs were denied their procedural due process rights by virtue of a sham hearing or that the Council failed to act impartially in determining the best way to effectuate the Town's goal of improving coastal access pursuant to its Comprehensive Plan. *See id.*; *Narragansett Pension Board*, 275 A.3d at 550 (citing *Eldridge*, 424 U.S. at 333).

In sum, Plaintiffs fail to establish a reasonable likelihood of success on the merits with respect to their procedural due process claim under Count I. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705; *Fund for Community Progress*, 695 A.2d at 521.

ii

Substantive Due Process

In support of their substantive due process claim, Plaintiffs argue that the Amended Parking Ordinance is unconstitutional because it is not rationally related to any legitimate government interest and is therefore "illegal, excessive, arbitrary, capricious and unrelated to any benefit of the regulation would have upon the Town's roadways[.]" *See* Pls.' Mem. 17-21.

In response, the Defendants argue that the Amended Parking Ordinance and the actions taken by the Council in connection therewith do not constitute substantive due process violations because "[t]he amendments were enacted to improve parking in the Town of Narragansett as well as improve coastal access not only for Narragansett residents but for all Rhode Islanders." (Defs.' Opp'n Mem. 12.) Thus, the Defendants conclude that the reasons for enacting the Amended Parking Ordinance advanced a legitimate state interest and thus comported with the Town's Comprehensive Plan. *Id.*

When a claimant alleges violation of their substantive due process rights and their fundamental rights are not at issue, substantive due process still "'guards against arbitrary and capricious government action.'" *Kaveny v. Town of Cumberland Zoning Board of Review*, 875 A.2d 1, 10 (R.I. 2005) (quoting *Brunelle v. Town of South Kingstown*, 700 A.2d 1075, 1084 (R.I. 1997)). To advance such a claim on those grounds, the plaintiff must show that the law in question is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." *Id.*

Here, Plaintiffs do not allege violation of one of their fundamental rights. (Compl. ¶¶ 45-48; Pls.' Mem. 21.) Rather, Plaintiffs reiterate their argument that the Amended Parking Ordinance "is not rationally relation to any legitimate governmental interest" based on the Council's "failure to document and substantiate the need for the [Amended Parking Ordinance" while mandating the same upon "Town residents owning property in the locus." (Pls.' Mem. 21.) Thus, the issue before the Court is whether the Amended Parking Ordinance bears any substantial relation to the public health, safety, morals, or general welfare. *See Kaveny*, 875 A.2d at 10.

The Court has previously determined that the Amended Parking Ordinance was adopted to advance a key and legitimate government interest incorporated into the Town's Comprehensive Plan—i.e., the need for improved coastal access. *See supra* Section III.A.2. Moreover, the Court has also determined that the Council conducted an adequate level of due diligence and exercised its legislative discretion when enacting the Amended Parking Ordinance. *See supra* Section III.A.2.

Accordingly, Plaintiffs have failed to establish a likelihood of success on the merits with respect to their substantive due process claim under Count I. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705; *Fund for Community Progress*, 695 A.2d at 521.

4

Equal Protection

Plaintiffs also maintain that the Amended Parking Ordinance violates the Equal Protection Clause contained in Article I, § 2 of the Rhode Island Constitution. (Pls.' Mem. 24-25.) On this issue, Plaintiffs surmise that "[t]he Town's Charter and regulations flowing therefrom, including but not limited to the Town's Official List of Parking Restrictions and Regulations and the

Subdivision Regulations, have not been uniformly applied to owners of properties located along public rights-of-ways in the Town." *Id.* at 25.

In reply, the Defendants argue that the Amended Parking Ordinance is not violative of the Equal Protection Clause because it does not contain any legal classifications, serves a legitimate government interest, and is applied equally to citizens and non-citizens of the Town. (Defs.' Opp'n Mem. 15-16.)

The Equal Protection Clause of the Rhode Island Constitution provides in pertinent part that no person shall be "denied equal protection of the laws." R.I. Const. art. 1, § 2. Constitutional challenges under the Equal Protection Clause can be formulated on two different bases. *See Narragansett Indian Tribe v. State*, 110 A.3d 1160, 1163 (R.I. 2015). They can be "as-applied" or "facial challenges." *Id.*

i

As Applied Challenge

"[A]s-applied challenges"—as opposed to "facial challenges"—are designed to "evaluate the constitutionality of a [law] 'as applied to the particular facts at issue.'" *Id.* (first quoting Gillian E. Metzger, *Facial and As-Applied Challenges Under the Roberts Court*, 36 Fordham Urb. L.J. 773, 786 (2009), then quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010)).

Here, the Council took legislative action to amend regulations pertaining to parking restrictions on the Subject Roadways and Nichols Avenue. *See* Defs.' Opp'n Mem. Ex. 7 (March 1, 2021 Meeting Minutes); Defs.' Opp'n Mem. Ex. 9 (May 3, 2021 Meeting Minutes). Plaintiffs aver that "[u]pon information and belief the Town has not developed a uniform parking plan applicable to the many narrow public rights-of-way located within the Town." (Pls.' Mem. 25.)

Plaintiffs also maintain that the Council "haphazardly eliminated parking restrictions applicable along Pilgrim Avenue, Conant Avenue, and Louise Avenue since 1970." *Id.*

Yet, Plaintiffs have not come forth with any evidence to substantiate these averments which they make "[u]pon information and belief[]" or that the Town has applied its parking regulations in a manner that violates the Equal Protection Clause. *See id.* at 24-25. To the contrary, the evidence on this record demonstrates that the Council decided to exercise its legislative discretion and enact the amended regulations only after careful consideration of various issues and a determination that the proposed changes comport with its Comprehensive Plan. *See supra* Section III.A.1, III.A.2.[1]

Based on the foregoing analysis, Plaintiffs' as-applied challenge is unpersuasive. *See Narragansett Indian Tribe*, 110 A.3d at 1163.

ii

Facial Challenge

For facial challenges under the Equal Protection Clause, if a legislative act "does not impinge on a fundamental right" or "create a suspect classification," Rhode Island courts are to "employ a rational basis test" to determine whether it violates the Rhode Island Constitution. *Mackie v. State*, 936 A.2d 588, 596 (R.I. 2007) (citing *Cherenzia v. Lynch*, 847 A.2d 818, 823-25 (R.I. 2004)). Thus, "under the equal protection clause, legislative classifications that do not affect a fundamental right or a suspect class such as race, alienage, or national origin . . . will be upheld so long as they bear a reasonable relationship to public health, safety, or welfare." *Riley v. Rhode*

[1] Additionally, Plaintiffs' contention that the Town has applied the Subdivision Regulations in a non-uniform fashion falls flat because that regulatory scheme does not apply to the Subject Roadways, as explained in more detail following the analysis of Plaintiffs' due process claims. *See infra* Section III.A.3.

Island Department of Environmental Management, 941 A.2d 198, 211 (R.I. 2008) (citing *Kaveny*, 875 A.2d at 11).

To the extent Plaintiffs seek a "facial challenge" to the Amended Parking Ordinance, they do not allege that any of their fundamental rights have been violated. *See generally* Pls.' Mem.; Compl. Also, the Amended Parking Ordinance does not contain any suspect legal classifications. *See* Pls.' Mem. Ex. B (text of Amended Parking Ordinance); *Riley*, 941 A.2d at 211 (providing examples of suspect classifications). Accordingly, the Amended Parking Ordinance need only satisfy the rational basis test for purposes of a "facial challenge." *Mackie*, 936 A.2d at 596; *Riley*, 941 A.2d at 211.

The Court has determined that the Amended Parking Ordinance was enacted to serve a legitimate government interest which bears a substantial relationship to the public welfare—i.e., providing greater coastal access. *See supra* Section III.A.2, III.A.3.ii. As such, Plaintiffs have failed to establish a reasonable likelihood of success on the merits for purposes of a facial challenge under the Equal Protection Clause because the Amended Parking Ordinance passes muster under the rational basis test. *See Riley*, 941 A.2d at 211.

In sum, Plaintiffs have failed to establish a likelihood of success on the merits with respect to their equal protection claim under Count II. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705; *Fund for Community Progress*, 695 A.2d at 521; *Narragansett Indian Tribe*, 110 A.3d at 1163; *Riley*, 941 A.2d at 211.

5

The Takings Clause

Plaintiffs also claim that the Amended Parking Ordinance amounts to an unconstitutional taking without just compensation under Article I, § 16 of the Rhode Island Constitution. (Compl. 3; *id.* ¶ 49.)

Article I, § 16 of the Rhode Island Constitution provides in pertinent part that:

> "Private property shall not be taken for public uses, without just compensation. The powers of the state and of its municipalities to regulate and control the use of land . . . in furtherance of the protection of the rights of the people to enjoy and freely exercise the . . . privileges of the shore, as those rights and duties are set forth in Section 17, shall be an exercise of the police powers of the state, shall be liberally construed, and shall not be deemed to be a public use of private property." R.I. Const. art. I, § 16.

Here, the parties do not dispute that all members of the public have the right to use the Subject Roadways as public rights-of-way. Plaintiffs have not argued this issue. *See generally* Pls.' Mem. Nor have they come forward with evidence to specifically establish that the Amended Parking Ordinance amounts to a government taking of their privately owned land.

Therefore, the Court is left to conclude that Plaintiffs have failed to establish a reasonable likelihood of success on the merits with respect to their claim under the Takings Clause. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705; *Fund for Community Progress*, 695 A.2d at 521.

6

Subdivision Regulations

Plaintiffs also argue that the Subject Roadways "are non-conforming, substandard rights-of-way[s], because they do not comply with, nor comport to, applicable standards set out in the Town's Subdivision Regulations." (Pls.' Mem. 21.)

In response, the Defendants argue two key points for why the subdivision regulations are not relevant to the legality of the Amended Parking Ordinance. *See* Defs.' Opp'n Mem. 12-14.

First, the Defendants maintain that § I(C) of the Town's Subdivision Regulations provides that "those regulations 'are not intended to supersede, abrogate, or interfere with any provision of any ordinance of the Town[.]'" *Id.* at 13 (citing Code of Ordinances of Town of Narragansett, Rhode Island, Appendix B – Subdivision and Land Development Regulations § I(C)(1) (Sept. 18, 2019)).

Second, the Defendants argue that "the Subdivision Regulations do not apply in this instance because the regulations only apply to plans 'for the subdivision and development of land.'" *Id.* at 13 (citing Code of Ordinances of Town of Narragansett, Rhode Island, Appendix B – Subdivision and Land Development Regulations § I(B) (Sept. 18, 2019)).

The purpose of the Town's Subdivision Regulations "is to establish procedural and substantive provisions for the subdivision and development of land" and accomplish ten separate goals in a manner that is "consistent with the provisions of the Narragansett Comprehensive Community Plan and the Narragansett Zoning Ordinance[.]" *See* Code of Ordinances of Town of Narragansett, Rhode Island, Appendix B – Subdivision and Land Development Regulations § I(B) (Sept. 18, 2019).

The Subdivision Regulations define the terms "Administrative Subdivision," "Minor Subdivision," and "Major Subdivision." *See id.* § II (Sept. 18, 2019). These definitions do not encompass amendments to parking ordinances. *See id.* The Subdivision Regulations also contain various definitions regarding the development of land. *See generally id.* These definitions likewise do not encompass amendments to parking ordinances. *See generally id.*

In sum, the Subdivision Regulations do not apply to the facts of the instant case because the Council's enactment of the Amended Parking Ordinance does not fall within the ambit of that regulatory scheme. *See id.* §§ I(B), I(C), II. Accordingly, Plaintiffs do not have a likelihood of success on the merits under Count III. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705; *Fund for Community Progress*, 695 A.2d at 521.

7

Public Health, Safety, and Welfare

Plaintiffs argue that the Amended Parking Ordinance is illegal because it fails to comport with the public health, safety, and welfare. (Pls.' Mem. 23-25.) In support of this argument, Plaintiffs maintain that the Amended Parking Ordinance obstructs the ability of those "residing, or owning property" along the Subject Roadways "from use of the public rights-of-way from end to end and from side to side." *Id.* at 24. Plaintiffs also reiterate their contention that the Council failed to exercise due diligence in enacting the Amended Parking Ordinance and had no rational basis for the enactment of the same. *Id.* Finally, Plaintiffs point to the Affidavit of Jeffrey Dirk in support of their claim that "not only did the Town fail to appropriately consider" safety concerns, "but it is abundantly clear that there are severe traffic and safety issues now present and continuing." *See id.* (citing and relying on Pls.' Mem. Ex. G (Dirk Aff.).)

In response, the Defendants first argue that the Amended Parking Ordinance comports with matters of public health, safety, and welfare based on its conformance with the Town's Comprehensive Plan. (Defs.' Opp'n Mem. 14.) The Defendants also put forth evidence—in the form of affidavits with attachments—to argue that "[t]he data simply does not support the Plaintiffs' contention that the addition of parking on the subject streets impacts the public health, safety, or welfare." *See id.* at 14-15.

The Dirk Affidavit is the crux of Plaintiffs' argument with respect to the public health, safety, and welfare implications of the Amended Parking Ordinance. *See* Pls.' Mem. 23-25. However, Mr. Dirk's affidavit provides nothing in the way of concrete data or evidence to demonstrate that Plaintiffs have a likelihood of proving that the Amended Parking Ordinance: (a) obstructs the private rights-of-ways at issue; (b) prevents Plaintiffs and other townspeople from unfettered access to those rights-of-ways; (c) creates safety issues; or (d) prevents emergency vehicles from being able to traverse the Subject Roadways. *See generally* Pls.' Mem. Ex. G (Dirk Aff.)

Conversely, the Defendants have come forth with strong evidence demonstrating that Plaintiffs' public health, safety, and welfare allegations are unfounded based on available data and various field tests involving emergency vehicles. *See* Defs.' Opp'n Mem. Ex. 13 (Sorice Aff.), ¶¶ 4-5; Partington Aff. ¶¶ 4-13. Furthermore, the Council also adhered to the Fire Department's recommendation that parking be wholly restricted on Nichols Avenue to ensure access for emergency vehicles to Plat M, which includes the Subject Roadways. *See* Partington Aff. ¶ 7; Defs.' Opp'n Mem. Ex. 7 (March 1, 2021 Meeting Minutes) (documenting vote to approve parking restrictions on Nichols Avenue). Moreover, the Court has already determined that the Amended Parking Ordinance was enacted to further the initiative of providing improved coastal access. *See supra* Section III.A.2.

Here, there is strong evidence and arguments to support a finding that the Amended Parking Ordinance comports with the public health, safety, and welfare such that Plaintiffs' lack of evidence to the contrary demonstrates they do not have a likelihood of success on the merits under Count IV. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705; *Fund for Community Progress*, 695 A.2d at 521.

B

Irreparable Harm

Litigants seeking injunctive relief must prove that they "stand[] to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position." *Fund for Community Progress*, 695 A.2d at 521.

Plaintiffs argue that because they "are residents of the Town of Narragansett and specifically live along Louise Avenue and Pilgrim Avenue . . . they have suffered an injury-in-fact" stemming from the enactment of the Amended Parking Ordinance. (Pls.' Mem. 25.) More specifically, Plaintiffs argue that the Amended Parking Ordinance "constrains and constricts residents in the Town owning property" along the Subject Roadways "from freely passing along the rights-of-way." *Id.* In addition, Plaintiffs maintain that allowing parking on the Subject Roadways "eliminates the possibility for traffic to traverse safely in a two-way manner[,] . . . results in their properties being trespassed upon, or taken[,]" and restricts and hinders both "everyday vehicles" and emergency vehicles "from safe passage and repassage." *Id.* Thus, while not explicitly stated in their papers, Plaintiffs effectively argue that they stand to suffer various forms of irreparable harm because they reside along Louise Avenue, which is in close proximity to Pilgrim Avenue and Conant Avenue. *See id.*; Defs.' Opp'n Mem. Ex. 3 (Tax Assessor's Map).

In response, the Defendants first argue that the Plaintiffs' contentions only amount to a "theoretical prospective injury" that the Council already addressed. (Defs.' Opp'n Mem. 16.) The Defendants next argue that Plaintiffs' contentions regarding the inability to reside on the Subject Roadways safely is unsupported by any evidence and the fact that Plaintiffs reside on Louise Avenue calls in question their standing to challenge the public parking now available on Pilgrim Avenue and Conant Avenue. *See id.* at 16-17. The Defendants also assert the Town "is enabled,

through state legislation and town ordinance," to utilize designated public rights-of-ways for public parking and other uses within a width of fifty feet. *See id.* at 17-19.

A key part of any standing analysis—which Defendants assert Plaintiffs cannot satisfy here with respect to Conant Avenue and Pilgrim Avenue—is whether they have suffered an "injury in fact, economic or otherwise." *See Bowen v. Mollis*, 945 A.2d 314, 317 (R.I. 2008); *Meyer v. City of Newport,* 844 A.2d 148, 151 (R.I. 2004).

In making this determination, Rhode Island courts "employ the criterion for considering a 12(b)(6) motion[,]" meaning "[t]he allegations in a complaint are . . . to be taken as true and viewed in the light most favorable to the plaintiff[.]" *Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 26, 317 A.2d 124, 129-30 (1974). Our Supreme Court has defined injury in fact as "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" *Pontbriand v. Sundlun,* 699 A.2d 856, 862 (R.I. 1997) (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992)); *Meyer,* 844 A.2d at 151.

Courts have determined that physical proximity can provide a sufficient basis to determine that a plaintiff has suffered an injury-in-fact for purposes of standing. *See, e.g.*, *Conservation Law Foundation of Rhode Island v. General Services Administration*, 427 F. Supp. 1369, 1373-74 (D.R.I. 1977) (citing *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. 1975)) (holding that organizational plaintiff had an injury-in-fact to establish standing because some of its members had an "undisputable geographical nexus and proximity which cannot escape environmental consequences"); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 73-74 (1978) (citing *United States v. SCRAP*, 412 U.S. 669 (1973); *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972)). ("Certainly the environmental and aesthetic consequences of the thermal

pollution of the two lakes in the vicinity of the disputed power plants is the type of harmful effect which has been deemed adequate in prior cases to satisfy the 'injury in fact' standard.").

Here, there is no dispute that Plaintiffs have the ability to challenge the Amended Parking Ordinance based on their residency along Louise Avenue. Likewise, the Court deems their physical proximity to Conant Avenue and Pilgrim Avenue in connection with the injuries alleged in the Complaint—particularly those relating to the impact on public health, safety, and welfare in Plaintiffs' neighborhood, Conant Avenue, and Pilgrim Avenue—are sufficient to confer standing to challenge the changes to parking restrictions on each of the Subject Roadways. *See Rhode Island Ophthalmological Society*, 113 R.I. at 26, 317 A.2d at 129-30; Compl. ¶¶ 33-39, 67-78.

However, the fact that Plaintiffs have standing to institute a challenge to the Amended Parking Ordinance with respect to each of the Subject Roadways does not, without more, establish that they stand to suffer an irreparable harm for which no adequate legal remedy exists to restore them to their rightful positions. *See Fund for Community Progress*, 695 A.2d at 521.

Here, plaintiffs have failed to present evidence that the Amended Parking Ordinance has already caused or is likely to cause issues pertaining to public health, safety, and welfare. *See supra* Section III.A.7. Plaintiffs' reliance on Mr. Dirk's Affidavit does not help their position because his analysis was wholly prospective in nature and is contradicted by the evidence demonstrating that public parking on the Subject Roadways has not created safety issues. *See supra* Section III.A.7. Plaintiffs have also failed to come forth with evidence in support of their contention that the Amended Parking Ordinance has resulted in a loss of business opportunities and trespasses upon their land.

Furthermore, Plaintiffs' assertions that they have suffered per se irreparable harms—i.e., based on their alleged loss of business opportunities and constitutional injuries—is unpersuasive

and their arguments in that respect ring hollow. *See* Pls.' Mem. 25-26. First, Plaintiffs have failed to substantiate their claim that the Amended Parking Ordinance has resulted in a loss of business opportunity through "a complete infringement upon a use of their property[.]" *See id.* at 25-26. Second, the Court has already determined that Plaintiffs do not have a likelihood of prevailing on the merits of their various constitutional claims. *See supra* Sections III.A.1, III.A.2 (analyzing likelihood of success on the merits with respect to Plaintiffs' constitutional claims).

Therefore, Plaintiffs have failed to demonstrate they stand to suffer some irreparable harm that is presently threatened or imminent such that the third preliminary injunction factor weighs in favor of the Defendants as well. *See Fund for Community Progress*, 695 A.2d at 521.

C

Balance of the Equities

Determining whether the balance of the equities tips in Plaintiffs' favor calls for an examination of potential hardships the respective parties might suffer and whether the public interest would be served by the issuance or denial of a preliminary injunction against the Town. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705.

Plaintiffs argue that the equities weigh in favor of granting the requested injunctive relief because the Town will suffer no harm if their request for injunctive relief is granted but "Plaintiffs have suffered and will continue to suffer irreparable harm should the [Amended] Parking Ordinance remain in existence." (Pls.' Mem. 26.)

In response, the Defendants assert that the Town and "Rhode Islanders as a whole" will suffer hardship if Plaintiffs' request for an injunction is granted. (Defs.' Opp'n Mem. 20.) Specifically, the Defendants maintain that: (a) Plaintiffs have failed to demonstrate that they stand to suffer an irreparable injury and (b) the issue of coastal access is a matter of especially important

public interest that weighs in favor of denying Plaintiffs' Motion. *See id.* The Defendants also assert that denying the request for injunctive relief will not affect Plaintiffs' ability "to traverse up, down, and around their street[]" and that they "will still also be able to enjoy uninterrupted egress and ingress to their driveways." *Id.*

Here, the equities tip in the Defendants' favor. *See id.* While Plaintiffs clearly take issue with allowing any level of parking on the Subject Roadways, the evidence on this record does not demonstrate that they stand to suffer irreparable harm. *See supra* Section III.B.

Conversely, the Town stands to suffer harm if the requested injunctive relief were granted because it would be forced to take action that undermines the Town's Comprehensive Plan and its extensive efforts to enact the Amended Parking Ordinance in accordance with the same. *See, e.g.*, Defs.' Opp'n Mem. Ex. 9 (May 3, 2021 Meeting Minutes) (containing statements from several councilmembers and members of the public regarding importance of parking in relation to coastal access). Furthermore, coastal access is paramount to the citizens of the Town as well as the State. *See* Defs.' Opp'n Mem. Ex. 11 (Narragansett Comprehensive Plan Baseline Report), at 138. Consequently, granting injunctive relief would also be against the overriding public interest in greater coastal access. *See* Defs.' Opp'n Mem. Ex. 11 (Narragansett Comprehensive Plan Baseline Report), at 138, 141 (discussing importance of coastal access through public rights-of-way in relation to Comprehensive Plan and specifically listing the Subject Roadways in relation thereto); *see also generally* Defs.' Opp'n Mem. Ex. 10 (Excerpts from Narragansett Comprehensive Plan Action Plan and Roadmap) (listing goals specific to issue of coastal access).

Therefore, the Court hereby determines that the balance of the equities tips in the Defendants' favor. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705.

D

Preservation of the Status Quo

The final factor to consider is whether granting Plaintiffs' request for a preliminary injunction will preserve the status quo. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705. Determining whether the grant of injunctive relief will preserve the status quo requires consideration of the particular factual circumstances that existed prior to the controversy in question. *See, e.g., Allaire v. Fease*, 824 A.2d 454 (R.I. 2003); *Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 65 A.3d 480, 483 (R.I. 2013); *Pucino v. Uttley*, 785 A.2d 183, 188 (R.I. 2001).

On this issue, Plaintiffs argue that granting their request for injunctive relief will maintain the status quo because the restriction against parking on the Subject Roadways has been in place for more than fifty years. (Pls.' Mem. 26.)

In reply, the Defendants maintain that denying the requested injunctive relief will maintain the status quo of working towards "maximizing coastal access for all Rhode Islanders[.]" (Defs.' Opp'n Mem. 21.)

There is no dispute that parking on the Subject Roadways was prohibited for many years prior to the enactment of the Amended Parking Ordinance. However, the crux of the status quo ante in this matter is the Town's authority to regulate and control the Subject Roadways in a manner that permits safe and unobstructed use of the same by residents, non-residents, and emergency services. The evidence presented demonstrates that the Town's regulations with respect to the Subject Roadways continue to allow residents, non-residents, and emergency services to make use of the Subject Roadways in a safe and unobstructed manner. *See* Defs.' Opp'n Mem. Ex. 13 (Sorice Aff.) ¶¶ 4-5; Partington Aff. ¶¶ 4-13. Furthermore, ensuring coastal access

for all citizens maintains the status quo. *See* Defs.' Opp'n Mem. Ex. 10 (Excerpts from Narragansett Comprehensive Plan Action Plan and Roadmap) (listing goals specific to issue of coastal access).

Accordingly, denying the request for injunctive relief will maintain the status quo such that this factor cuts in the Defendants' favor as well. *See Iggy's Doughboys, Inc.*, 729 A.2d at 705.

IV

Conclusion

For the reasons stated herein, the Court hereby denies Plaintiffs' Motion for Injunctive Relief. Counsel shall prepare the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Dina DiRuzzo and Carol Laclair v. Christine Spagnoli, et al.**
CASE NO:	**WC-2021-0258**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**October 20, 2022**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiffs:	**John O. Mancini, Esq.; Nicholas J. Goodier, Esq.**
For Defendants:	**James M. Callaghan, Esq.**